

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
NOV 17 2017	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY:	DEPUTY

1 UNITED STATES DISTRICT COURT
2
3

4 DISTRICT OF NEVADA.
5
6

7 KENNETH GLEN ERICKSON,
8
9

Plaintiff,

v.

LAURA ERICKSON, *et. al.*,
8
9

Defendants.

3:17-cv-00326-RCJ-VPC

REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE

10 This Report and Recommendation is made to the Honorable Robert C. Jones, United
11 States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28
12 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is Kenneth Erickson's ("plaintiff")
13 application to proceed *in forma pauperis* (ECF No. 13) and *pro se* complaint (ECF No. 16).
14 Having reviewed the record, the court recommends that plaintiff's application to proceed *in forma*
15 *pauperis* be granted, and that the complaint be dismissed with prejudice.

16 **I. IN FORMA PAUPERIS APPLICATION**

17 As set forth in 28 U.S.C. § 1915(a), the court may authorize a plaintiff to proceed *in*
18 *forma pauperis* if he or she is unable to pay the prescribed court fees. Based on the financial
19 information in the record, the court finds that plaintiff is unable to pay the filing fee in this
20 matter. Accordingly, the court recommends that plaintiff's application to proceed *in forma*
21 *pauperis* be granted.

22 **II. LEGAL STANDARD**

23 Applications to proceed *in forma pauperis* are governed by 28 U.S.C. § 1915. Section
24 1915 provides, in relevant part, that "the court shall dismiss the case at any time if the court
25 determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim upon
26 which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune
27 from such relief." 28 U.S.C. § 1915(e)(2)(B). Dismissal of a complaint for failure to state a
28 claim upon which relief may be granted is provided for in Federal Rule of Civil Procedure

1 12(b)(6), and the court applies the same standard under section 1915 when reviewing the
2 adequacy of a complaint or amended complaint. *See Resnick v. Hayes*, 213 F.3d 443, 447 (9th
3 Cir. 2000).

4 Under Rule 12(b)(6), the court must dismiss the complaint if it fails to “state a claim for
5 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Courts
6 accept as true all well-pled factual allegations, set aside legal conclusions, and verify that the
7 factual allegations state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).
8 Although the complaint need not contain detailed factual allegations, it must offer more than “a
9 formulaic recitation of the elements of a cause of action” and “raise a right to relief above a
10 speculative level.” *Twombly*, 550 U.S. at 555.

11 The complaint is construed in a light most favorable to the plaintiff. *Chubb Custom Ins.*
12 *Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The court takes particular
13 care when reviewing the pleadings of a *pro se* party, for a more forgiving standard applies to
14 litigants not represented by counsel. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). If
15 dismissal is appropriate, the *pro se* plaintiff should be given leave to amend the complaint, and
16 some notice of its deficiencies, unless it is clear that those deficiencies cannot be cured. *Cato v.*
17 *United States*, 70 F.3d 1103, 1107 (9th Cir. 1995).

18 **III. DISCUSSION**

19 Plaintiff brings this action pursuant to 42 U.S.C. § 1983, against Laura Erickson, Justice
20 Erickson, Don Milham, Jodie Barker, and Brittney Nicole Barker. (ECF No. 1-1 at 1-2.).
21 Plaintiff’s largely incomprehensible narrative makes it impossible for the court to identify the
22 factual or legal bases for his claims or the nature of his requested relief.

23 Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain “a short and
24 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
25 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Twombly*, 550
26 U.S. at 555 (quotation and alteration omitted). It must also include “a demand for the relief
27 sought . . .” Fed. R. Civ. P. 8(a)(3). Here, plaintiff’s complaint is rambling and nonsensical.
28 Plaintiff repeatedly states that he owns an account with three million dollars, and claims that

1 defendants used an unspecified device to harm plaintiff and blur his memory. (ECF No. 16 at 1,
2 3, 9.) Despite plaintiff's vague references to the Constitution, the gravamen of his claim remains
3 unclear. Dismissal on those grounds alone is appropriate. Plaintiff states no claim upon which
4 relief may be granted, and given the unintelligible nature of the allegations, amendment would be
5 futile. *See Cato*, 70 F.3d at 1106. Therefore, it is recommended that the action be dismissed with
6 prejudice.

7 **IV. CONCLUSION**

8 Consistent with the foregoing, the court finds that dismissal is warranted under 28 U.S.C.
9 1915(e)(2)(B)(ii). Because amendment would be futile, the dismissal should be with prejudice.
10 *See Cato*, 70 F.3d at 1106.

11 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
12 Practice, the parties may file specific written objections to this Report and Recommendation
13 within fourteen days of receipt. These objections should be entitled "Objections to Magistrate
14 Judge's Report and Recommendation" and should be accompanied by points and authorities for
15 consideration by the District Court.

16 2. This Report and Recommendation is not an appealable order and any notice of
17 appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's
18 judgment.

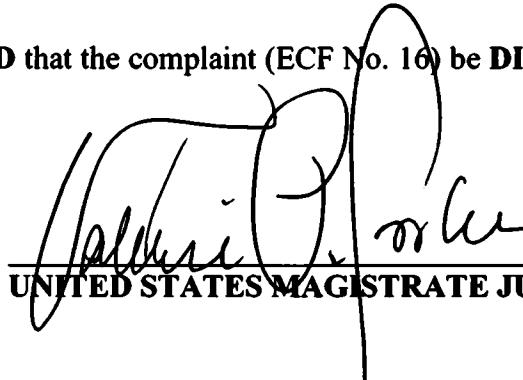
19 **V. RECOMMENDATION**

20 **IT IS THEREFORE RECOMMENDED** that plaintiff's application to proceed *in*
21 *forma pauperis* (ECF No. 13) be **GRANTED**;

22 **IT IS FURTHER RECOMMENDED** that the Clerk **FILE** plaintiff's complaint (ECF
23 No. 16);

24 **IT IS FURTHER RECOMMENDED** that the complaint (ECF No. 16) be **DISMISSED**
25 **WITH PREJUDICE**.

26 DATED: November 17, 2017

27 
28 **UNITED STATES MAGISTRATE JUDGE**